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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ELIZABETH CURRY WHITE, Plaintiff and Appellant, v. JACQUELINE TABER et al., Defendants and Respondents.	A127700 (Alameda County Super. Ct. No. RG09430436)

INTRODUCTION

Plaintiff Elizabeth White appeals in propria persona from an order of the Alameda County Superior Court denying her "Motion to Contest Ruling 11/6/09 and Enforce Judgment," entered on January 27, 2010. In their response brief, respondents Jacqueline Taber and Jon Rantzman, judges of the Alameda County Superior Court, seek dismissal of the appeal on the grounds that the appeal is from a nonappealable order and is untimely in any event. Respondents further contend that appellant has failed to establish the court abused its discretion in refusing to vacate her voluntary dismissal of the complaint and that respondents are protected by judicial immunity for their actions as judges. We shall dismiss the appeal as untimely.

At the outset, we observe that it is not entirely clear what order appellant is purporting to appeal, as her form notice of appeal indicates the appeal is from a "Default

judgment" entered January 27, 2010. Our review of the record indicates the following sequence of events.

BACKGROUND

On January 13, 2009, appellant filed a form complaint for personal injury against respondents. The description of reasons for liability contained does not appear to state a cause of action, but appears to arise out of the judges' performance of their judicial functions in connection with other litigation involving appellant. The complaint stated the alleged torts occurred on December 24, 2008 and January 7, 2009, in Department 102 of the Alameda County Superior Court, and that respondents violated the Code of Judicial Ethics and their professional responsibilities as judges.

On March 2, 2009, appellant sought to enter the defaults of respondents. (At least one previous attempt to enter respondents' defaults had been rejected due to defective service.) Apparently the clerk did enter the defaults, but no default judgment appears in the record. The court notified appellant by order filed on March 13, 2009, that the "Request for Default was filed and entered" as to respondents on March 2, 2009, due to a "clerical oversight." The order stated the proofs of service filed on the named defendants on January 20, 2009, were defective. Therefore, the court for good cause and on its own motion set aside and vacated the defaults as to respondents. This order was served by mail on appellant on March 13, 2009.

On April 6, 2009, appellant filed a voluntary request for dismissal of the entire action with prejudice. In an accompanying declaration, she appeared to argue that the court had erroneously set aside respondents' default. Dismissal was entered as requested on that day.

On May 18, 2009, appellant filed a document entitled "Reconsideration for Set A-Side Dismissal of Judgment," seeking to set aside her voluntary dismissal and contending that she had used the wrong form and was "overwhelm [*sic*] and undergoing severe emotional intense mental tort, due to" respondents' behavior. On May 29, 2009, the

court (Hon. Richard Keller) denied appellant's request to set aside the dismissal. The record does not disclose when appellant was served with notice of that order. Nevertheless, appellant responded with the filing on June 1, 2009 of a "Motion for Order to Show Cause and Order to Vacate Judgment/Order Ex Parte." Therein she claimed that the dismissal was due to clerical mistake, that she had used an incorrect form and an incorrect request for reconsideration of judgment. There was no further explanation. That motion was denied on June 2, 2009.

On July 10, 2009, appellant filed a document titled "Opposition to Contest Ruling Present Oral Argument Rule 3.10," apparently seeking to disqualify superior court judges Keller, Dombrick and MacLaren pursuant to Code of Civil Procedure section 170.6.[1] On August 26, 2009, appellant filed a "Motion to Set Aside Summary Judgment" that she maintained had been entered on May 29, 2009 and June 2, 2009 by Judge Keller. This motion again appeared to challenge the vacating of the default against respondents and the court's denials of her previous motions.

On September 2, 2009**,** appellant filed an "Amend Motion to Set Aside Judgment Dismissal April 6, 2009," stating she filed for an involuntary dismissal and that section 473, subdivision (b), mandated relief based on an " 'attorney affidavit of fault' " attesting her mistake, inadvertence and neglect and again arguing there had been no valid reason to set aside the respondents' default.[2] That motion was heard on November 9, 2009, appellant did not appear, and the court issued an order on November 9, 2009

[1] All statutory references are to the Code of Civil Procedure, and all rule references are to the California Rules of Court, unless otherwise indicated.

[2] We note that "[t]he mandatory relief provision [of section 473, subdivision (b)] does not operate in favor of a party representing himself or herself in propria persona. Under the plain language of the statute, the mandatory relief provision only applies in the case of an 'attorney' representing a 'client.' [Citation.]" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (2009) ¶ 5:295.10, citing *Esther B. v. City of Los Angeles* (2008) 158 Cal.App.4th 1093, 1099.)

denying the motion. Appellant was served by mail with the order denying the motion on November 10, 2009.

On November 19, 2009, appellant filed a "Motion to Contest Ruling 11/6/09 and Enforce Judgment," again asserting, among other things, that the court was biased, that she was not receiving a fair trial and had been denied her day in court, that respondents had not answered her complaint, and that their default was properly taken. Thereafter, appellant filed various other papers with the court. For example, on November 30, 2009, she filed a "Notice for Tentative Ruling Rule. CRC.3.1312"; on December 7, 2009, she filed a "Notice to the Court" asking "for a compromise release in favor of plaintiff" of "$10,000.00 from each defendant"; on December 28, 2009, she filed a "Written Notice for Motion Compromise Settlement and Relief Date Set Before the Court 1/27/2010"; and on December 31, 2009, she filed a "Request for Personal Injury Litigation with Argument."

On January 27, 2010, the court heard appellant's "Motion to Contest Ruling 11/6/09 and Enforce Judgment." Appellant was present. The court denied the motion. On January 29, 2010, appellant filed a notice of appeal from the order entered January27, 2010, but as we have noted, checked the box marked "Default judgment."

DISCUSSION

We begin with the proposition that in "pro[pria] per[sona] litigants are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

We are convinced that the appeal is untimely, although not for the reasons advanced by respondents. Respondents contend that the trigger for a timely appeal was, at the latest, the court order of November 9, 2009, denying appellant's "Amend Motion to Set Aside Judgment Dismissal April 6, 2009," which was served on appellant by mail on November 10, 2009, and that appellant was required to file her appeal within 60 days of that order. Rule 8.104 provides in relevant part: "Unless a statute or rule 8.108 provides

otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (1) 60 days after the superior court clerk serves the party filing the notice of appeal *with a document entitled "Notice of Entry"* of judgment *or a file-stamped copy* of the judgment, showing the date either was served." (Italics added.)[3] The flaw in respondents' argument is that the order met neither of the alternative requisites of the rule to trigger the shortened 60-day appeal period. The order was not file-stamped and the proof of service executed by the clerk did not reference any document entitled "Notice of Entry." Consequently, the 60-day limit did not apply.

Nevertheless, appellant's appeal was untimely filed as it was not filed within 180 days from entry of the order of May 29, 2009, denying appellant's request to set aside her voluntary dismissal of her action against respondents. (Rule 8.104(a)(3).) The outside time limit for the filing of an appeal is "180 days after entry of judgment." (Rule 8.104(a)(3).) "This rule sets an outside limit on the time for appeal in those situations where, for whatever reason (e.g., neglect or confusion), neither the clerk nor any party gives proper notice of entry of the judgment or appealable order. [Citation.]" (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (2009) ¶ 3:18, p. 3-9 (Eisenberg, Civil Appeals and Writs).) Nor do authorized extensions of the filing period following denial of various posttrial motions, such as motions to vacate or to reconsider a judgment, stretch the appeal deadline beyond the 180-day limit. (Rule 8.108(a), (b), (c), (d) & (e); *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 818-819; *Carpiaux v. Peralta Community College Dist.* (1989) 215 Cal.App.3d 1220, 1223; Eisenberg, *supra*, Civil Appeals and Writs, ¶¶ 3:18, 3:62, pp. 3-9, 3-28.1.) So far as we can decipher from the various motions and documents filed by appellant after the May 29, 2009 order, they all sought in various ways to have the court reconsider and vacate its order of March 13,

[3] Rule 8.104(f), provides that the term "judgment" as used in subdivision (a), "includes an appealable order if appeal is from an appealable order."

2009 vacating the entry of respondents' default and/or to have the court reconsider and vacate its May 29, 2009 order denying appellant's motion to vacate her voluntary dismissal.

The order vacating the entry of respondents' default by the clerk was not an appealable order. As the right of appeal presupposes that the underlying judgment sought to be vacated is an appealable final judgment, no appeal lies from an order vacating a nonfinal, nonappealable ruling. Consequently, no appeal lies from an order granting a motion to vacate a *default entry* where no default *judgment* has been entered. (Eisenberg, *supra*, Civil Appeals and Writs, ¶¶ 2:116.1, 2:167, pp. 2-65, 2-92 to 2-93.)

Assuming, without deciding, that the May 29, 2009 order denying appellant's motion to vacate was an appealable order (and respondents contend it was not), that order triggered the 180-day appeal period. Appellant did not file an appeal within that time, but instead waited eight months to appeal. Although this appeal purports to be from the January 27, 2010 court order denying appellant's "Motion to Contest Ruling 11/6/09 and Enforce Judgment," that motion appears to have challenged the court's November 9, 2009 denial of appellant's September 2, 2009 motion to set aside her original April 6, 2009 voluntary dismissal. The time for filing an appeal from an appealable order cannot be extended beyond the 180-day limit by the repeated filing of motions seeking to vacate that order or by the tactic of stacking challenges to each denial of the preceding motion by another motion to vacate, contest or reconsider those rulings. Once the time for appeal of the denial of her initial motion to vacate her voluntary dismissal had passed, appellant's repeated motions could not resurrect it.

We conclude the instant appeal was not timely filed.

DISPOSITION

The appeal is dismissed. Respondents are awarded their costs on this appeal.

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Kline, P.J.

We concur:

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Lambden, J.

_____
Richman, J.

A127700, *White v. Taber et al.*